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In the Matter of: :

1982 Remand and 1983 Jukebox : Docket Nos. 83-2 and
84-283JD

Distribution Proceedings :

- - - - - X

(This volume contains pages 386 through 442)

1111 20th Street, Northwest
Room 458
Washington, D. C.

Thursday, October 3, 1985

The hearing in the above-entitled matter was
reconvened pursuant to adjournment at 3:00 p.m.

BEFORE:

EDWARD W. RAY	Chairman
MARIO F. AGUERO	Commissioner
ROBERT CASSLER	General Counsel

1 APPEARANCES:

2 ASCAP:

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12 ACEMLA:

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16 Washington, D. C.

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>TRIBUNAL</u>
JOHN SLOATE	406	- -	426	- -
By Mr. Eisen	- -	411	- -	- -
By Comm. Aguero	- -	- -	- -	425
MICHAEL BRADY	429	- -	- -	- -
By Comm. Aguero	- -	- -	- -	435
By Chairman Ray	- -	- -	- -	436
By Mr. Eisen	- -	438	- -	- -

<u>EXHIBITS</u>	<u>IDENT.</u>	<u>RECVD.</u>
A/B/S 18-S Revised Exam. of Establ. LAM Attach. #12	399	403
Offer of Proof - 18-X	405	- -

P R O C E E D I N G S .

(3:00 p.m.)

CHAIRMAN RAY: On the record, please.

Before we start, I have a statement I would like to read into the record.

I have reviewed the transcript of the jukebox hearing held this past Monday, September 30, 1985, and I would like to make one correction and one clarification. On page 4, the transcript reads, "Today we begin the consolidated proceedings for the 1982 and 1983 Jukebox Distribution Proceedings."

That should be corrected to read, "Today we begin the consolidated proceedings for the 1982 (remand) and 1983 Jukebox Distribution Proceedings."

Next, on page 24 of the transcript, Mr. Eisen has raised his point that whether a jukebox is licensed, or unlicensed was not relevant to the proceedings. In response to Mr. Eisen, I said, "But we do agree that as to whether the jukeboxes are licensed, or unlicensed is immaterial. It is not relevant for our final determination, but to delete the entire paragraph it would, again, not provide us at least another look at even a minimum number of jukeboxes -- some information regarding jukeboxes."

I wish to clarify what I meant to say. First, I intended to speak only for myself as Commissioner and

1 not for the Tribunal. Therefore, any time the word "we"
2 was used in my exchange with Mr. Eisen, I meant to use
3 the word "I".

4 Second, I did not intend to convey the impression
5 whether a jukebox is licensed or unlicensed is irrelevant
6 to the proceedings. What I intended to say was that pre-
7 senting evidence to us that a particular jukebox in a
8 particular neighborhood is unlicensed does not necessary
9 rebut the argument of a party that its works have been
10 played on licensed jukeboxes, because these jukebox surveys
11 are being offered as representative of jukebox play
12 across America.

13 In addition, because actual information on
14 jukebox play has not been available to us, I intended to
15 say that I would have a very liberal policy on admitting
16 as much information as possible on any jukebox surveys,
17 whether licensed or unlicensed.

18 Are there any comments on those clarifications,
19 or changes in the record?

20 COMMISSIONER AGUERO: May I make a clarification,
21 Mr. Chairman?

22 On page 46 of the transcript of Monday, the 30th,
23 identified, instead of Oscar de Fontana the name should
24 be Jose Luis Rodriguez. Thank you.

25 CHAIRMAN RAY: Today we will conclude the hearings

1 of the 1982 Remand -- consolidated 1982 Remand and the
2 1983 Jukebox Distribution Proceedings.

3 At the close of yesterday's hearings, the
4 Tribunal admitted A/B/S Exhibit No. 17 and No. 18. There
5 was a motion presented by Mr. Eisen to exclude A/B/S 18-X
6 and the Tribunal did not rule on that motion. I don't
7 have the transcript before me, I didn't receive it today.
8 However, the Tribunal, after a brief recess, came back and
9 suggested to the parties that if they felt it necessary,
10 we would allocate another day for rebuttal, if this is to
11 be admitted, if the motion is to be denied, for LAM to have
12 an opportunity to rebut.

13 Without having the transcript available to me,
14 it was my impression that all parties chose not to extend
15 the hearing for another day, and all parties stated that
16 it was not necessary to have a rebuttal period for this
17 proceeding. But A/B/S agreed to bring witnesses today
18 who actually did the survey in 18-X and give Mr. Eisen
19 an opportunity to cross or rebut.

20 Because of the disagreement, the Tribunal denies
21 the motion to exclude 18-X from the record, and will
22 include it as part of the record.

23 Are there any comments from counsel, before we
24 go further?

25 MR. EISEN: Yes, I had two preliminary matters.

1 First of all, in light of your ruling, Mr. Chairman, I am
2 not -- we may be dealing with semantics, maybe not -- the
3 fact that A/B/S has brought these witnesses to Washington
4 pursuant to our discussion last evening, does not neces-
5 sarily result in the fact that we are in a rebuttal session
6 at this point.

7 Rather I believe that although this has already
8 been admitted into evidence, I am simply going to test the
9 witnesses who performed the "survey", to find out exactly
10 what they did to accomplish that survey. Whether or not
11 it is rebuttal, I, frankly don't think it is. I think it
12 is simply a matter of testing the credibility and the
13 manner in which the survey was accomplished.

14 CHAIRMAN RAY: Yes, sir.

15 Any comments?

16 MR. KOENIGSBERG: Well, I have two comments, one
17 of which will go to -- Mr. Eisen said he had two comments,
18 I thought --

19 MR. EISEN: Yes, I do have another comment, but
20 it is something that I wanted to raise preliminarily,
21 because I know if I don't, I am going to forget.

22 CHAIRMAN RAY: All right, go ahead, sir.

23 MR. EISEN: And what it does is tie up, or I
24 hope to tie up at least one end.

25 You will recall that early on in this proceeding

1 we raised questions about the status of Italian Book
2 Company, and a stipulation that was circulated amongst
3 counsel to see whether or not it could be resolved, at
4 least Italian Book Company status at this proceeding, by
5 virtue of that stipulation.

6 I have had two discussions with Dennis Angel,
7 who represents Italian Book Company, and I have told Mr.
8 Angel, and I am prepared to state on the record today, that
9 ACEMLA will enter into such a stipulation, at least to
10 resolve that matter.

11 CHAIRMAN RAY: Very good. Thank you, sir.

12 MR. KOENIGSBERG: Thank you, Mr. Chairman.

13 I have two preliminary matters, too, and they
14 deal in part with the witnesses who are here today, and
15 in part with Exhibit 18-X.

16 I might say I am in complete agreement with Mr.
17 Eisen that this is not rebuttal, that he is testing the
18 credibility of these witnesses.

19 First of all, the field representatives who
20 performed this examination were three; their names are
21 John Sloate, S-l-o-a-t-e; Michael Brady; and Frank Robbins,
22 R-o-b-b-i-n-s.

23 Mr. Sloate and Mr. Brady are with us today. Mr.
24 Robbins would have been with us today, but for this fact,
25 his wife, he tells us, is expecting a baby quite literally

1 at any second. And we inquired of him as to whether he
2 could get away from New York, even for a few hours today,
3 and sadly, the answer was no, he could not.

4 That being the case, we wanted to move forward
5 today and we, therefore, have Mr. Sloate and Mr. Brady
6 with us. And we trust that that will be satisfactory.

7 CHAIRMAN RAY: Mr. Eisen, any comments?

8 MR. EISEN: Yes, it is not satisfactory. I
9 sympathize with Mr. Robbins -- is that the name of the
10 gentleman?

11 MR. KOENIGSBERG: Yes, sir.

12 MR. EISEN: I wouldn't want to come to Washington,
13 D. C. either to testify, when my wife was in the process
14 of giving birth. But to the extent that some of the
15 establishments were allegedly visited by Mr. Robbins, and
16 to the extent that we agreed to have this further session,
17 I must object to anything on Exhibit No. 18-X that was
18 compiled as a result of Mr. Robbins' own survey.

19 CHAIRMAN RAY: Only to that portion of the
20 exhibit that relates to Mr. Robbins' actual surveys?

21 MR. EISEN: Only to that part.

22 MR. KOENIGSBERG: Mr. Chairman, I believe that
23 the entire -- all the information, including information
24 compiled by Mr. Robbins should go in. Indeed, you will
25 recall that we said yesterday that we did not think that

1 it was necessary to have any of these witnesses come down,
2 but we would do so, simply to wrap this matter up.

3 The fact of the matter is, Mr. Robbins cannot
4 be with us today.

5 I believe that after you hear the testimony of
6 the two witnesses who you will hear today, you will have
7 sufficient basis for concluding that the credibility of
8 that portion of this examination that was done by Mr.
9 Robbins is satisfactory for admissibility into the
10 Tribunal's records.

11 I would suggest, therefore, that you withhold
12 a ruling on this motion, until after we have heard the
13 testimony of these witnesses. I would further suggest to
14 you, sir, that if, in fact, that motion is made and the
15 testimony today is not satisfactory to the Tribunal, we
16 will undertake to come back another day with Mr. Robbins,
17 to put all of this evidence in, because we think it is
18 quite important.

19 CHAIRMAN RAY: Let me ask you a question. Is it
20 possible to itemize the locations that were visited by
21 Mr. Robbins?

22 MR. KOENIGSBERG: Yes, sir, it is. And we pro-
23 pose to do -- indeed, we shall do just that during the
24 testimony today.

25 CHAIRMAN RAY: Is it possible for you to give us

1 that information, prior to the testimony?

2 MR. KOENIGSBERG: I can give it to you right now,
3 yes, sir.

4 Before I do, however, sir, let me get to the
5 second point, and then I will do it before we put the
6 witness on the stand.

7 The second point is this, I said that we didn't
8 think that we had to bring these witnesses down, but I
9 also want to say that I am grateful for the opportunity
10 to do so. Indeed, I must say that I am grateful to Mr.
11 Eisen for raising the question, because it gave me an
12 opportunity to discuss these points with the witnesses,
13 and to check what they had done.

14 There were some additions and some corrections
15 to be made to that Exhibit 18-X. We have found that the
16 individuals who conducted this examination visited three
17 establishments of which we were not aware of when this
18 cross-examination exhibit had been prepared. We have
19 included those three on a revised exhibit.

20 We have also gained additional information about
21 certain of the other establishments that were visited from
22 our discussions with them.

23 And, therefore, Mr. Chairman, I would like to
24 put into the record A/B/S Exhibit 18-X Revised, to contain
25 this additional information to which these witnesses can

1 testify about.

2 Now, would you like me to specify what the
3 changes are, between this exhibit and the Exhibit 18-X
4 that we put in yesterday?

5 CHAIRMAN RAY: Yes, and then I would like to
6 hear comments from Mr. Eisen.

7 MR. KOENIGSBERG: Here are the changes: first,
8 up at the top on the first page, you note it says Results
9 of Examination 9-21, and in the exhibit yesterday it was
10 9-21 to 22. We have learned that -- I had been informed
11 that the examination was made on September 21st and 22nd.
12 I learned today that Mr. Brady conducted his on September
13 23rd. So, we have indicated that.

14 Secondly, the second location, Asia de Cuba, you
15 will see there is an addition there, it is now called
16 La Taza No. 2 Restaurant, instead Asia de Cuba.

17 Third, one of the establishments that -- one of
18 those three establishments that was visited, that was not
19 listed on the exhibit yesterday, which we have just learned
20 of, is called Cafe Andalucia. It did have a jukebox on
21 premises, the license status of that jukebox is unknown.
22 Therefore, we included it as the third listing.

23 Fifth, El Barin Restaurant, we listed that on the
24 previous exhibit as having no jukebox, we now know that
25 it is now known as Marie's Beauty Salon, and has no jukebox.

1 That's the fifth item, El Barin Restaurant.

2 Sixth, El Castillo Rojo, we have listed that in
3 our previous exhibit as out of business. I am now informed
4 that it is now occupied by the Rose Saigon Nightclub, which
5 does have a jukebox, but on which jukebox are listed no
6 Spanish songs.

7 Next, El Con-Con, this is one of the three
8 establishments that was not listed on Exhibit 18-X. As you
9 can see, El Con-Con is now called the El-Sa Restaurant, but
10 it does not have a jukebox.

11 On the next item, El Deportivo, you will recall
12 that the testimony yesterday was that none of the -- I
13 don't know if it was the testimony, or an indication by
14 me, but in any event, the record yesterday said that the
15 jukeboxes that were listed as existing were unlicensed;
16 so I have inserted the word "unlicensed" there, just so it
17 is clear on the face of the exhibit.

18 If you go down two, to Raul's Cafe, this is a
19 correction from what was put in the exhibit yesterday.
20 The exhibit yesterday indicated that it had no jukebox;
21 indeed, I have learned that it does have a jukebox, it is
22 an unlicensed jukebox on the premises.

23 The next listing, Oquendo Restaurant, we had
24 listed it as having no jukebox; it has no jukebox, in fact,
25 it is now a hardware store, and that is now indicated.

1 El Inca Restaurant, again, we have inserted the
2 word "unlicensed".

3 In Las Penas, we have again inserted the word
4 "unlicensed".

5 The third establishment that was not listed on
6 Exhibit 18-X that was inserted yesterday, but which we now
7 know was visited was Montero's Bar, that is the third from
8 the bottom, you can see it has a jukebox on premises and
9 the license status is unknown.

10 Those are the additions and corrections to
11 Exhibit 18-X.

12 Mr. Chairman, you have asked me to indicate which
13 of those places were visited by Mr. Robbins.

14 CHAIRMAN RAY: Right.

15 MR. KOENIGSBERG: And are the ones from El Inca
16 Restaurant, which you can see on the first page -- El Inca
17 Restaurant, every one following El Inca Restaurant to the
18 end of the exhibit were visited by Mr. Robbins; including
19 the ones on page 2 of Exhibit 18-X Revised.

20 (Whereupon, the document was marked
21 for identification as A/B/S Exhibit
No. 18-X Revised)

22 COMMISSIONER AGUERO: Twelve altogether for Mr.
23 Robbins?

24 MR. KOENIGSBERG: Yes, sir.

25 CHAIRMAN RAY: You have an objection -- a motion.

1 Are there any other comments regarding the changes?

2 MR. EISEN: I don't want Mr. Koenigsberg to
3 throw his pen again, but there is a slangy legal expression
4 call "sandbagging". And I think that is what we are engag-
5 ing in right now.

6 We were presented with an exhibit that went into
7 the record last evening. I had made a motion to strike.
8 With that exhibit we did our own limited survey last even-
9 ing.

10 I think any additional information that comes
11 into the record this morning doesn't give us an opportunity
12 to provide any of our own information with regard to this
13 cross-examination, and I would object to it.

14 CHAIRMAN RAY: Now, let me ask again, on the
15 original 18-X exhibit that was put into the record, could
16 you give me the listings of Mr. Robbins?

17 MR. KOENIGSBERG: Yes, on original 18-X, let's
18 see, El Inca Restaurant; Leon Doro; Big Daddy; Las Pends;
19 Latin Castle; Manuel Morales Restaurant; Miramar Restaurant;
20 Restaurant Guayaquil; Quinteros; Aretama; and Salinas
21 Ecuador Restaurant.

22 CHAIRMAN RAY: Off the record for about five
23 minutes.

24 MR. KOENIGSBERG: Mr. Chairman, if I may, on the
25 record, I would like to respond to what Mr. Eisen said,

1 without throwing my pen. But I would like to respond to
2 that slimy legal expression "sandbagging".

3 I take offense, personally, at that suggestion,
4 and I take offense on behalf of my clients, professionally,
5 as well. Personally, I take offense at it, and I will
6 simply state to you that the Tribunal has known me for
7 many years, and the suggestion that I would undertake such
8 an activity is outrageous. And I will leave it to the
9 good sense of the Tribunal, and their knowledge of me, as
10 to whether I would do such a thing.

11 Now, second, going to the merits, such as they
12 are, of that objection. I had not spoken with the repre-
13 sentatives who had undertaken to do this examination before
14 yesterday and this morning. Yesterday, I mean, after the
15 session yesterday. I believe that exhibits that we present
16 to the Tribunal should be accurate in every respect.

17 If I had not put in a revised Exhibit 18-X, I
18 assure you I would have asked the witnesses while they were
19 on the stand whether they had any changes or corrections
20 to that exhibit, as I have done with every set of written
21 testimony and exhibits that have been placed before the
22 Tribunal by ASCAP, BMI and SESAC.

23 I don't think this is a question of "sandbagging"
24 at all. To the degree that things were in error on
25 Exhibit 18-X, we have freely come to you and told you that

1 they were in error.

2 And if Mr. Eisen has evidence that they were in
3 error in 18-X, errors other than the errors we have found,
4 he is free to cross-examine the witnesses on those errors,
5 if there are any.

6 But our belief is that the Tribunal should have
7 the accurate information that exists, and to that extent,
8 we have voluntarily come before you to tell you what the
9 errors were, what additions there are, what we would elicit
10 on direct examination of these witnesses.

11 Now, with that said, Mr. Chairman, I am done.

12 CHAIRMAN RAY: One last comment, Mr. Eisen, before
13 we go off the record?

14 MR. EISEN: My objection still stands. I don't
15 think it is a slimy term, I don't think it is a particularly
16 friendly term, but I don't think it is quite as bad as
17 counsel indicated. I certainly didn't intend it to be
18 slimy.

19 Also, I get the impression that A/B/S feels that
20 in someway they are doing everyone here a great favor in
21 bringing these people down, and for that reason, they should
22 have some sort of dispensation. That is not the way I see
23 it at all, and I don't think that is the way the Tribunal
24 ruled last evening.

25 So, to the extent that there was any inference for

1 Mr. Koenigsberg that, in fact, this largesse that the
2 A/B/S people have given us, to bring these people down
3 entitles them to restructure exhibits that were offered
4 last evening, I don't think that helps one bit.

5 And my objection stands.

6 CHAIRMAN RAY: Thank you, sir.

7 Let's take five minutes.

8 (Whereupon, a short recess was taken.)

9 CHAIRMAN RAY: On the record.

10 In regard to the motion made by Mr. Eisen, the
11 Tribunal has made the following decisions: Number one,
12 A/B/S Exhibit No. 18-X as revised will be admitted into
13 the record with the following exception: the three new
14 locations that have been added to 18-X Revised -- would
15 you read those three locations, to make certain I have them?

16 MR. KOENIGSBERG: Yes, sir, they are Cafe
17 Andalucia; El Con-Con; and Montero's Bar.

18 CHAIRMAN RAY: Those three locations will be
19 deleted in their entirety from this exhibit.

20 MR. EISEN: I'm sorry, the third one was, what?

21 MR. KOENIGSBERG: Montero's Bar, the third from
22 the bottom on the first page.

23 (Whereupon, A/B/S Exhibit 18-X
24 revised was received in evidence,
with stipulations.)

25 CHAIRMAN RAY: The Tribunal will also delete all

1 locations surveyed by Mr. Robbins. And, again, Mr.
2 Koenigsberg, would you be kind enough to read those loca-
3 tions?

4 MR. KOENIGSBERG: Yes, sir. They are El Inca
5 Restaurant; Leon de Oro; Big Daddy; Las Penas; Latin
6 Castle; Manuel Morales Restaurant; Miramar Restaurant;
7 Restaurant Guayaquil; Quinteros; Aretama; and Salinas
8 Ecuador Restaurant.

9 CHAIRMAN RAY: Thank you.

10 MR. KOENIGSBERG: Mr. Chairman, may I make two
11 points? First, I do note for the record that we have
12 offered on a subsequent date to bring Mr. Robbins down to
13 testify as to those places, and he will also bring down a
14 picture of his baby, which I presume will be born by then.

15 Does the Tribunal not wish to accept that offer?

16 CHAIRMAN RAY: Thank Mr. Robbins, but the
17 Tribunal has also determined that the proceedings will be
18 concluded today, there will be no other evidence taken.

19 MR. KOENIGSBERG: Very good, sir.

20 For the record then, I would simply like the
21 record to note that we are making an offer of proof as to
22 those excluded establishments that Mr. Robbins surveyed.
23 I do so, Mr. Chairman, in accordance with Section 301.51(g)
24 of the Tribunal's Rules of Evidence.

25 Let me read that rule to you, sir, to refresh

1 everyone's memory on it.

2 "If the Chairman rejects or excludes proposed
3 oral testimony and an Offer of Proof is made, the Offer
4 of Proof shall consist of a statement of the substance of
5 the evidence, which is contended would have been adduced.
6 In the case of documentary or written evidence, a copy of
7 such evidence shall be marked for identification and shall
8 constitute the Offer of Proof."

9 Therefore, Mr. Chairman, I simply suggest that
10 that portion of Exhibit 18-X Revised which consists of
11 those establishments that I just read into the record,
12 be marked for identification as Offer of Proof 18-X and
13 will constitute the Offer of Proof, in accordance with the
14 Tribunal's rules.

15 MR. EISEN: If that is what the rules are, I
16 have no objection.

17 CHAIRMAN RAY: The record will so note.

18 (Whereupon, the document was marked
19 for identification as A/B/S Offer
of Proof - 18X Revised)

20 CHAIRMAN RAY: Now, Mr. Koenigsberg, will you
21 please bring your witness forward?

22 MR. KOENIGSBERG: Happily, sir. Mr. Sloate, will
23 you take the stand?

24 Mr. Chairman, our first witness is John Sloate.

25 MR. EISEN: Mr. Chairman, I know you are anxious

1 to swear the witness in, I would move at this time for the
2 sequestration of the second witness. I think that there
3 are clearly questions that can be raised, both on direct
4 examination and possibly on cross-examination which are
5 the kinds of questions that I think are more properly
6 resolved when one of these two witnesses is out of the
7 room.

8 I think I have a right to do that, pursuant to
9 Section 615 of the Federal Rules of Evidence, and I would
10 request you, therefore, to sequester the other witness.

11 CHAIRMAN RAY: Your request is accepted.

12 MR. EISEN: Thank you, sir.

13 MR. KOENIGSBERG: Then I should say that I have
14 no objection to it, if I had been asked.

15 CHAIRMAN RAY: Would you please ask the other
16 witness to leave the room?
17 Whereupon,

18 JOHN SLOATE
19 was called as a witness and, having first been duly sworn,
20 was examined and testified as follows:

21 CHAIRMAN RAY: Mr. Sloate, thank you for coming
22 all the way from New York to appear before us today.

23 MR. KOENIGSBERG: Thank you, Mr. Chairman.

24 DIRECT EXAMINATION

25 BY MR. KOENIGSBERG:

1 Q Would you state your name for the record, please?

2 A John Sloate.

3 Q Are you employed by ASCAP, sir?

4 A Yes, I am.

5 Q Would you state your position?

6 A I am New York District Manager.

7 Q Sir, do you have in front of you a document that
8 was put into this case by ACEMLA entitled Partial List of
9 Some Establishments in the New York City Area Which Have
10 a Jukebox Performing Spanish-Lanuage Titles, Including
11 Some from our Repertoire?

12 A Yes, I do.

13 Q Were you instructed to visit certain establish-
14 ments listed on that partial list?

15 A Yes, I was.

16 Q Who gave you those instructions, sir?

17 A A gentleman by the name of Bill Lee.

18 Q Would you tell the Tribunal who Mr. Lee is?

19 A He is Mr. Barry Knittel's assistant.

20 Q Now, what instructions were you given by Mr. Lee,
21 what were you told to do?

22 A I was to take the list and pick a random number
23 between 20-25 establishments, and have representatives
24 visit the establishments to see whether they had jukeboxes,
25 and also, to see whether -- to list the songs that were

1 actually on the jukebox, and also, whether they had a
2 Copyright Office certificate.

3 Q Now, who did you -- you say representatives,
4 who were the representatives who you had visit the estab-
5 lishments?

6 A Frank Robbins, Michael Brady and myself.

7 Q What establishments did you tell Mr. Robbins to
8 visit?

9 A Basically, all of the ones --

10 MR. EISEN: Objection, it is irrelevant, you have
11 already stricken the ones that Mr. Robbins visited.

12 MR. KOENIGSBERG: Mr. Chairman, I am just trying
13 to give the Tribunal a complete picture of the instructions
14 that were given to Mr. Sloate, and that Mr. Sloate, in
15 turn, gave. It is part of the story --

16 MR. EISEN: But the story, except on the Offer
17 of Proof, which really has nothing to do with the record,
18 isn't relevant. Mr. Robbins' establishments have been
19 deleted from this particular exhibit. There is no use in
20 going into Mr. Robbins visiting these establishments with
21 this witness.

22 CHAIRMAN RAY: Any more comments?

23 MR. KOENIGSBERG: Yes, sir, there is an Offer of
24 Proof, it may well be relevant to the record.

25 MR. EISEN: No, that is not the case.

1 CHAIRMAN RAY: The objection is sustained.

2 BY MR. KOENIGSBERG:

3 Q Mr. Sloate, what establishments did you tell Mr.
4 Brady to visit?

5 A The establishments that were in the northern part
6 of Manhattan, which were in close proximity to where he
7 was based.

8 Q And what establishments did you, yourself, visit?

9 A Also establishments -- I live in Manhattan myself,
10 close by to my house, which is convenient to the basic
11 geographic area in the northern part of Manhattan.

12 Q Now, if you take ASCAP, BMI, SESAC Exhibit 18-X
13 Revised -- do you have a copy of it?

14 A Yes, I do.

15 Q Would you tell the Tribunal which of the estab-
16 lishments indicated on that list you visited?

17 A (Perusing document) I, personally, visited
18 Alvarez Luncheonette; Asia de Cuba; Cafe Andalucia --

19 Q That one has been stricken from the record. Let's
20 go to the next one.

21 A El Antojito Restaurant; El Barin Restaurant;
22 El Castillo Rojo; El Con-Con.

23 Q That one, too, has been stricken from the record.
24 Go ahead.

25 A And El Flamboyen.

1 Q Did you know of any of these establishments
2 before you received that list?

3 A No, I did not.

4 Q In general terms, what did you do when you
5 visited these establishments?

6 A I went to the establishment, checked the address
7 and the name of the establishment, went in to visually see
8 whether there was a jukebox on the premises, and then
9 noted that in my findings.

10 Q Can you describe the establishments that you
11 visited today for the Tribunal?

12 MR. EISEN: Objection. Again, what is the
13 relevance of describing these places?

14 MR. KOENIGSBERG: I will withdraw the question,
15 Mr. Chairman. I am trying to be helpful, that's fine.

16 BY MR. KOENIGSBERG:

17 Q To whom did you report your findings?

18 A To Mr. Bill Lee.

19 Q Did Mr. Brady report his findings to Mr. Lee, or
20 to you?

21 A He reported them to me.

22 Q Did you report Mr. Brady's findings to Mr. Lee,
23 as well?

24 A Yes, I did.

25 Q Now, you have before you ASCAP, BMI, SESAC

1 Exhibit 18-X Revised, are your findings accurately stated
2 on that exhibit?

3 A Yes, they are.

4 Q With the exception of the places that have been
5 stricken from the record on Exhibit 18-X, did you visit
6 any of the other places on the partial list of establish-
7 ments in New York City, which has been furnished to the
8 Tribunal?

9 A No, I did not.

10 MR. KOENIGSBERG: Mr. Chairman, that concludes
11 my direct examination of this witness.

12 CHAIRMAN RAY: Commissioner Agüero?

13 COMMISSIONER AGÜERO: No questions.

14 CHAIRMAN RAY: I have no questions.
15 Mr. Eisen.

16 MR. EISEN: May I have just a moment?

17 CHAIRMAN RAY: Yes, you may.

18 MR. EISEN: Thank you.

19 (Pause)

20 CROSS-EXAMINATION

21 BY MR. EISEN:

22 Q Good afternoon, Mr. Sloate. My name is Bruce
23 Eisen.

24 Who visited El Deportivo?

25 A Michael Brady, I believe.

1 Q Where do you presently reside?

2 A In Manhattan.

3 Q What is the address?

4 A 61 West 85th Street.

5 Q You testified that some of the establishments
6 you visited were in your neighborhood, is that correct?

7 A Yes.

8 Q Were all of the establishments that you visited
9 in your neighborhood?

10 A No.

11 Q Which of the establishments were in your neighbor-
12 hood?

13 A El Antojito -- I am not sure exactly the addresses
14 of the other ones.

15 Q So, is it your testimony that only El Antojito
16 Restaurant was in your neighborhood?

17 A No, I am not sure exactly what is considered my
18 neighborhood.

19 Q Yes, I think that is a valid question, neighbor-
20 hood is a pretty broad term. Had you ever seen any of
21 these establishments before when traveling in New York
22 City?

23 A No.

24 Q Does that include the El Antojito Restaurant?

25 A Yes.

1 Q You had never seen it?

2 A No.

3 Q You mentioned that you had received some instruc-
4 tions initially from Mr. Lee, is that correct?

5 A Yes.

6 Q Did you receive any instructions initially from
7 Mr. Knittel?

8 A No, I did not.

9 Q I recognize that you testified that some of these
10 establishments were in your neighborhood, but do you know
11 how it was decided which particular establishments you were
12 going to visit, as opposed to Mr. Brady?

13 A Yes, I do.

14 Q Can you describe how that was decided?

15 A I basically picked a geographical area in
16 Manhattan where all of the establishments were easy to get
17 to, and basically at random.

18 Q Do you have any information as to the manner in
19 which Mr. Brady received his particular establishments?

20 A Yes.

21 Q And what is that?

22 A I gave him the addresses of the establishments
23 which I wanted him to go to, over the phone.

24 Q A/B/S Exhibit 18-X Revised states that the results
25 of this examination -- it states the results of the

1 examination, and it also shows that the survey, or the
2 examination was conducted from September 21 to September
3 23, 1985.

4 Can you tell me the dates that you visited these
5 establishments?

6 A Myself was on a Saturday, which was the 21st.

7 Q And do you know when Mr. Brady made his visits?

8 A On the 23rd, which was a Monday.

9 Q Your visits were on a Saturday, the ones you
10 visited?

11 A Yes.

12 Q Did Mr. Lee indicate to you, prior to making
13 these visits, what the purpose of your visits would be?

14 A No.

15 Q What exactly did he tell you?

16 A Well, he didn't tell me really anything, except
17 to go to the addresses and see whether there were jukeboxes,
18 and there was no reason of why, exactly, they were -- why
19 I was to go.

20 Q Did you discuss this matter with Mr. Brady?

21 A Only in giving him the addresses.

22 Q Did he indicate to you that he knew the reason
23 why you were making this trip?

24 A No.

25 Q So, in other words, Mr. Lee told you to visit

1 these establishments, Mr. Lee didn't tell you why you were
2 going, and you didn't inquire as to why you were going?

3 A We knew that we were going -- what we were going
4 to look for, but I didn't know why we were looking for
5 what we were looking for.

6 Q And, again, what is your position with ASCAP?

7 A New York District Manager.

8 Q Has Mr. Lee given you instructions on other
9 matters in the past?

10 A Yes.

11 Q You have not inquired in the past as to why you
12 were told to do a certain duty?

13 MR. KOENIGSBERG: Mr. Chairman, I will object
14 to that, I don't think it is of any relevance to this --

15 MR. EISEN: I think it is relevant.

16 MR. KOENIGSBERG: -- excuse me, one more point --
17 to this exhibit.

18 Go ahead.

19 MR. EISEN: I think to this witness's credibility,
20 if in the past he and Mr. Lee had discussions about pro-
21 jects that he was expected to execute, or implement, it is
22 important to know whether this is the only time that he
23 never received instructions and asked why he was told to
24 do something.

25 CHAIRMAN RAY: Objection overruled.

1 MR. EISEN: Thank you.

2 BY MR. EISEN:

3 Q The question is has Mr. Lee given you instructions
4 in the past?

5 A Yes.

6 Q And when he has given you instructions in the
7 past did you inquire as to why it was that he asked you to
8 perform certain duties?

9 A At times.

10 Q Have there been times in the past when Mr. Lee
11 told you to do things and, you, as district manager, didn't
12 inquire as to why you were being asked to do them?

13 A Yes.

14 Q And this was one of those times?

15 A Yes.

16 Q Did you know about this proceeding?

17 A No.

18 Q Did Mr. Lee tell you anything about ACEMLA,

19 A-C-E-M-L-A?

20 A No.

21 Q And you weren't interested enough to ask him why
22 it was that you had to go to these various jukeboxes and
23 establishments that you had never seen before to get
24 certain information?

25 A No.

1 Q Were the establishments that you visited on
2 Saturday, the 21st, in Hispanic neighborhoods?

3 A Yes.

4 Q How did you travel to these establishments?

5 A By car.

6 Q When you got to a particular establishment, what
7 did you do with your car?

8 A A couple of them, I parked at parking meters;
9 one or two I double-parked the car and left it there. But
10 most of the time it was parking meters.

11 Q If you double-parked the car, you didn't intend
12 to stay in any of these establishments very long, did you?

13 A I intended to go into the establishment.

14 Q You mean you went into an Hispanic neighborhood,
15 to which you had never been before, double-parked your
16 car to get the information that Mr. Lee expected you to
17 get, and you intended to stay in these establishments for
18 some period of time?

19 A The establishments that I went into, that I
20 double-parked in front of, were -- when I got up to them,
21 it was obvious that they were very small, and that when
22 I went in them, I was able to go through the whole estab-
23 lishment very quickly.

24 Q On Exhibit 18-X Revised which of the establishments
25 did you visit where you double-parked?

1 A (Perusing document) Asia de Cuba; and I don't
2 remember which ones -- other ones.

3 Q Was there more than one?

4 A Yes, there was.

5 Q More than two?

6 A No.

7 Q So, it is your testimony that there were two
8 such establishments that you visited where you double-
9 parked your car?

10 A Yes.

11 Q You don't recall what the other establishment
12 was where you double-parked?

13 A No.

14 Q Did you leave the motor running?

15 A No, I did not.

16 Q Can you tell me what time of day it was when you
17 visited these various establishments?

18 A Some around noontime, and some later on in the
19 afternoon.

20 Q Would you refer to Exhibit 18-X Revised, and just
21 take a moment to reflect and see, to the best of your
22 recollection, you can recall for each one of those that
23 you did visit, what time of day it was?

24 A (Perusing document) The only one I remember
25 exactly was El Barin, which was around 2:00 or 3:00 o'clock

1 in the afternoon.

2 Q You said earlier, correct me, if I am wrong,
3 that you visited one or more around 12:00 o'clock, is that
4 correct?

5 A Yes.

6 Q How many do you recall you visited around 12:00
7 o'clock?

8 A I believe it was two.

9 Q Two. That is in addition to El Barin?

10 A Yes.

11 Q Were the establishments crowded at noontime?

12 A Yes.

13 Q Were all of the establishments that you visited
14 crowded?

15 A No.

16 Q You made this visit to each of these establish-
17 ments by yourself, is that correct?

18 A Yes, I did.

19 Q And you testified on direct examination that you
20 entered the establishments in question, is that right?

21 A Yes.

22 Q Tell me exactly what you did when you entered?

23 A I entered the establishment, walked through the
24 whole establishment, looked around for a jukebox, and that
25 was it, and then I left.

1 Q Did anybody question you when you walked in?

2 A No.

3 Q Tell me what you did, in order to ascertain
4 whether there was a jukebox there? By that I mean this,
5 did you walk anywhere beyond the doorway?

6 A Yes, I did.

7 Q To where did you walk?

8 A To the far extremes of the establishment.

9 Q And did you have paper and pencil with you?

10 A No, I did not.

11 Q Did you take notes of any kind?

12 A Yes, I did.

13 Q When did you take the notes?

14 A When I got out into the car.

15 Q And what did you do when you got into the car
16 with regard to taking notes?

17 A Well, there really weren't many notes to take,
18 other than was there a jukebox, or not, which I was able
19 to remember.

20 Q With regard to El Castillo Rojo, that is now
21 the Rose Saigon Nightclub, according to your testimony,
22 or according to this exhibit. What did you do with regard
23 to that jukebox?

24 Q I went into the establishment and first I saw
25 that it was called a different establishment, with a

1 different name, so I went into the establishment to look
2 at the jukebox. And there was a jukebox there, but I was
3 instructed to ask if I could list the songs first, out of
4 courtesy. And when I asked an employee they refused to
5 let me do it.

6 Q So, you didn't list any songs?

7 A No, I did not.

8 Q In none of the establishments that you went to?

9 A That's right.

10 Q Okay. How long did you stay in each of these
11 establishments?

12 A Two-three minutes each.

13 Q And you didn't talk to anyone?

14 A No.

15 Q Did you look to see whether there were wall unit
16 jukeboxes in the restaurants?

17 A Yes.

18 Q You didn't find any?

19 A No.

20 Q You also looked to see whether or not there were
21 units that were free-standing?

22 A Yes, I did.

23 Q How can you be sure that you looked in every area
24 of the particular establishment that you went to?

25 A I don't know how to answer that.

1 Q You can't be sure, can you?

2 A Other than going into the mens room.

3 Q Well, sometimes restaurants or bars take corners
4 and --

5 A Well, most of the restaurants I was in were
6 basically square, and I was able to see the whole area.
7 And I wasn't in the kitchen, so --

8 Q Can you be sure of that, though?

9 A Yes.

10 Q That you saw the entire area?

11 A Yes, I did.

12 Q I would like to get this clear one more time,
13 when you looked to see whether or not there was a jukebox
14 in the establishment, your testimony is that you walked
15 into the establishment, and you walked throughout the
16 establishment?

17 A Yes.

18 Q Even in those establishments where you were
19 double-parked?

20 A Yes.

21 Q Did you have an opportunity to talk to anyone
22 in these establishments, to ask whether or not there had
23 been jukeboxes located there in the past?

24 A No.

25 Q Had you been instructed to do that?

1 A No.

2 Q And you didn't do it?

3 A No.

4 Q Similarly, you didn't ask specifically whether
5 or not any jukeboxes had been located in those establish-
6 ments in 1982 or 1983, is that correct?

7 A No.

8 Q Then you took the notes when you went back in
9 the car, is that correct?

10 A Yes.

11 Q It was Saturday, did you go back to your office
12 on Saturday?

13 A No, I did not.

14 Q Was Monday the next day that you went back to
15 your office?

16 A Yes, sir.

17 Q And what did you do then with this information?

18 A I then gave -- are you talking about my
19 information, just mine?

20 Q Just yours.

21 A I had it noted on the list that was given and
22 then I gave it to my secretary, and then I gave it to Mr.
23 Lee.

24 Q Did you and Mr. Lee have any conversation at that
25 time?

1 A No.

2 Q You just gave him the list?

3 A And he thanked me and that was it.

4 Q And, again, you didn't inquire into why you were
5 sent to these establishments?

6 A No.

7 Q And he didn't offer to tell you?

8 A No.

9 Q El Castillo Rojo, on A/B/S Exhibit 18-X Revised,
10 how did you learn that that particular restaurant had gone
11 out of business?

12 A By seeing that the name was different.

13 Q Oh, you didn't inquire of anyone as to whether
14 or not that restaurant had a different name in the past,
15 or different ownership in the past?

16 A No.

17 Q So, you don't know whether the same people owned
18 El Castillo Rojo as presently own Rose Saigon Nightclub?

19 A No.

20 Q Did Mr. Brady report to you the results of his
21 check of establishments?

22 A Yes, he did.

23 Q What did he tell you?

24 A He didn't tell me -- all he told me was that he
25 did what I told him to do, and he gave me his findings in

1 writing.

2 MR. EISEN: I have nothing further, thank you.

3 CHAIRMAN RAY: Commissioner.

4 EXAMINATION BY THE TRIBUNAL

5 BY COMMISSIONER AGUERO:

6 Q Just one question. You checked six jukeboxes
7 total?

8 A Yes.

9 Q And in those six you didn't find any jukeboxes
10 in any of those?

11 A Except the ones that I noted that had jukeboxes.

12 Q Which one is that?

13 A El Castillo Rojo.

14 Q That was the only one that had a jukebox?

15 A And also --

16 Q In that place the nightclub didn't have any
17 titles in Spanish?

18 A Could you repeat that, again?

19 Q El Castillo Rojo, out of business; now occupied
20 by Rose Saigon Restaurant, had jukebox, but with no
21 Spanish songs, no Spanish songs?

22 A No.

23 Q Did you check the list on the jukebox?

24 A I just looked at it quickly, they were mostly --
25 they were not Spanish songs.

1 COMMISSIONER AGUERO: Okay, thank you very much.
2 That's all.

3 CHAIRMAN RAY: Mr. Koenigsberg.

4 MR. KOENIGSBERG: Thank you, Mr. Chairman.

5 REDIRECT EXAMINATION

6 BY MR. KOENIGSBERG:

7 Q Commissioner Aguero has taken away from of my
8 redirect, but, Mr. Sloate, just one or two questions. In
9 the course of your job, is it your responsibility to go
10 into public establishments to ascertain if they are per-
11 forming music?

12 MR. EISEN: Objection, relevance.

13 MR. KOENIGSBERG: Well, I am going to establish
14 the relevance, because Mr. Eisen has questioned Mr. Sloate
15 about why he didn't ask questions, and the method by which
16 he examined the establishment. And I am getting to that
17 point.

18 CHAIRMAN RAY: Any comments, Mr. Eisen?

19 MR. EISEN: No, my objection stands.

20 CHAIRMAN RAY: The objection is overruled.

21 BY MR. KOENIGSBERG:

22 Q John, do you recall the question?

23 A Would you repeat it?

24 Q In the course of your job, is it your responsi-
25 bility to go into public establishments to ascertain if

1 they are performing music?

2 A In my capacity, no.

3 Q Were you a field representative?

4 A Yes.

5 Q And when you were a field representative was it
6 your job to do that then?

7 A Yes, it was.

8 MR. EISEN: Objection. I'm sorry, I must raise
9 an objection on relevancy. Now we are talking of a time
10 when this witness wasn't even in the present role that he
11 fills at ASCAP.

12 MR. KOENIGSBERG: Mr. Chairman, I am getting to
13 the experience of this witness, and going into establish-
14 ments, and finding out what gives through those doors. And
15 that is a question that Mr. Eisen asked him, and I am
16 going to establish his competence to do that.

17 CHAIRMAN RAY: Overruled.

18 BY MR. KOENIGSBERG:

19 Q When you were a field representative was it your
20 responsibility to go into establishments to ascertain
21 whether they were performing music publicly?

22 A Yes.

23 Q Do some establishments perform music publicly
24 by means of jukeboxes?

25 A Yes.

1 Q As part of your responsibilities then, have you
2 been careful about ascertaining whether an establishment
3 has a jukebox, or not?

4 A Yes.

5 Q When you went into these establishments did you
6 look throughout the public areas of the establishments?

7 A Yes, I did.

8 Q Did you go anywhere but the public areas of these
9 establishments?

10 A No, I didn't.

11 Q And you are satisfied that in each establishment
12 that you visited an examination of the entire public area
13 showed what the results that are given on Exhibit 18-X
14 Revised states, is that correct?

15 A Yes.

16 MR. KOENIGSBERG: Thank you. I have no further
17 questions, Mr. Chairman.

18 CHAIRMAN RAY: Mr. Sloate, thank you very much
19 for coming, and you are excused.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness was excused)

22 MR. KOENIGSBERG: I trust Mr. Sloate can now
23 remain in the room while Mr. Brady is on the stand?

24 CHAIRMAN RAY: Yes.

25 Off the record.

1 (Off the record)

2 CHAIRMAN RAY: Back on the record, please.

3 Whereupon,

4 MICHAEL BRADY

5 was called as a witness and, having first been duly sworn,
6 was examined and testified as follows:

7 CHAIRMAN RAY: First of all, we want to thank
8 you for coming down to testify before us today.

9 Mr. Koenigsberg.

10 MR. KOENIGSBERG: Thank you, Mr. Chairman.

11 DIRECT EXAMINATION

12 BY MR. KOENIGSBERG:

13 Q Would you state your name for the record, please?

14 A Yes, my name is Michael J. Brady.

15 Q Are you employed by ASCAP?

16 A Yes, sir, I am.

17 Q Would you state your position, please?

18 A Yes, I am a field representative in the New York
19 District Office.

20 Q Now, Mr. Brady, do you have before you a document
21 in this proceeding put in by ACEMLA captioned Partial
22 List of Some Establishments in the New York City Area
23 Which Have a Jukebox Performing Spanish Language Titles,
24 Including Some from Our Repertoire?

25 A Yes, sir, I do.

1 Q Were you instructed to visit any of the establish-
2 ments that are included on that partial list?

3 A Yes, I was.

4 Q Who gave you those instructions?

5 A Mr. John Sloate, the District Manager.

6 Q What instructions did Mr. Sloate give you?

7 A He gave me the names, the addresses of three
8 places, and instructed me that I should go there, determine
9 if they had a jukebox, if it was licensed, and if I could
10 obtain any song titles and performers from the jukebox.

11 Q Do you have before you a copy of ASCAP, BMI, SESAC
12 Exhibit 18-X Revised?

13 A Yes, sir.

14 Q Can you tell the Tribunal which establishments
15 on that list you visited?

16 A Yes, sir. The El Deportivo Restaurant; Raul's
17 Cafe; and Oquendo Restaurant. I hope I am pronouncing that
18 correctly -- Oquendo Restaurant.

19 COMMISSIONER AGUERO: Oquendo Restaurant.

20 BY MR. KOENIGSBERG:

21 Q Have you ever visited any of these establishments
22 before?

23 A No, I had not.

24 Q Had you ever seen them before?

25 A No, sir, I did not.

1 Q In general terms, what did you do when you visited
2 each one?

3 A I first found the location, I went in there and
4 determined if, in fact, they had a jukebox; if they did,
5 I went to it to see if it had a copyright certificate,
6 and then I went to try to find the owner or manager of the
7 premises, to get permission to write down the names of the
8 songs and performers.

9 Q How did you get to each establishment?

10 A I drove my car, first to the Oquendo Restaurant,
11 and I was not able to locate that. I went up and down the
12 street a few times, and then of course, I got out of my
13 car and walked up and down the street a few times and --

14 Q Excuse me, where did you park your car?

15 A On 181st Street.

16 Q By the curb, or did you double-park it?

17 A Oh, no, I put money in the meter.

18 Q Continue with your story of what you did, please,
19 Mr. Brady.

20 A Okay. I tried to locate Oquendo, as I said, I
21 was not able to at first, and then I noted the street
22 address and I noted that there was a hardware store there.
23 So, at that point, I called the office and spoke with Mr.
24 Sloate to make sure that I had the proper address that was
25 provided. And he said that that was the proper address.

1 So, I went into the hardware store and asked
2 some of the employees if they knew of the Oquendo Restau-
3 rant, or had ever heard of it. None of them had, at least
4 they said to me that they never had.

5 I went further, I went a few doors down, I
6 believe it was to a Woolworth's, it was some kind of a
7 variety store -- I am pretty sure it was a Woolworth's,
8 and asked some of the employees there if they were familiar
9 with the Oquendo Restaurant. They wouldn't give me any
10 answer, they referred me to a manager, and the manager told
11 me that as far as he knew, the restaurant had been out of
12 business about a year.

13 Q When did this occur, on what date?

14 A That would be on the 23rd, I believe that was a
15 Monday.

16 Q You say you went to the Oquendo Restaurant first,
17 where did you go from there?

18 A From there I went to El Deportivo, and I was
19 having trouble locating that first because the address
20 provided was not correct. I eventually stopped at a
21 grocery store in the area where it was supposed to be, and
22 asked the owner if he had ever heard of the restaurant,
23 and he indicated that it was further down, and he gave me
24 the location, said it would be near 169th Street.

25 So, I went there and did locate that restaurant.

1 Q Can you describe the restaurant to the Tribunal?

2 A Yes, I believe I can. As you are facing --

3 MR. EISEN: I objected earlier to a similar
4 question, and you sustained it.

5 MR. KOENIGSBERG: Mr. Chairman, since the question
6 of this witness's credibility has been raised, I would like
7 the Tribunal to know the care that was taken and the degree
8 to which he remembers what he did.

9 MR. EISEN: I had the very same credibility
10 questions.

11 MR. KOENIGSBERG: That is why this witness is
12 here, Mr. Chairman.

13 CHAIRMAN RAY: I know. Mr. Eisen, I believe in
14 the cross of the other witness you mentioned the layout
15 of the --

16 MR. EISEN: I am going to withdraw my objection.
17 You are absolutely right.

18 CHAIRMAN RAY: The layout of the location.

19 BY MR. KOENIGSBERG:

20 Q Before I get back to that question, where did you
21 park your car for El Deportivo?

22 A I believe I parked it across the street, in a
23 legal parking space.

24 Q Now, describe El Portivo for the Tribunal.

25 A All right, as you go towards the restaurant, the

1 entrance is on the right, there is a window on the left,
2 the entrance had a canopy coming out, and the "L" had been
3 blacked out, it still said Deportivo. The neon sign in the
4 window -- there is a red neon sign that said Neuevo
5 Deportivo. As you go in the door, there is a cashier's
6 booth glassed in to the left, I believe there is a counter
7 on the right. There were chairs and tables through the
8 center and to the left.

9 And on the left wall was where the jukebox was
10 located.

11 Q You know, Mike, if you don't remember, you can
12 say "I don't remember". Now, after El Deportivo, where did
13 you go?

14 A After El Deportivo, I went to Raul's Cafe.

15 Q And where did you park when you got to Raul's
16 Cafe?

17 A I believe there -- that's a good one, I didn't
18 park on Dikeman Street, I believe I parked on a side street,
19 about a block or two away, but I can't be certain what
20 street that was, to be honest.

21 Q Can you describe Raul's Cafe?

22 A I don't remember anything in particular about
23 the outside of the restaurant. I do know that in some way
24 it said Raul's Cafe, I was able to locate that. Inside,
25 as I recall, the cashier was to the left, there were chairs

1 and tables, seated about 25 or 30 people. And the jukebox,
2 if I recall, was against the back wall there.

3 Q Now, to whom did you report your findings?

4 A I reported those to Mr. John Sloate.

5 Q Do you have any idea what Mr. Sloate did with
6 them?

7 A No, I don't.

8 Q Did you ask Mr. Sloate why he wanted you to go
9 to these places?

10 A Yes.

11 Q What did he tell you?

12 A He didn't know.

13 Q Do you have before you Exhibit 18-X Revised?

14 A Yes.

15 Q Are your findings accurately stated for those
16 three establishments on that exhibit?

17 A (Perusing document) Yes, sir.

18 Q Did you visit any other places on that partial
19 list of some establishments that we referred to?

20 A No, I did not.

21 MR. KOENIGSBERG: That's it for the direct, Mr.
22 Chairman.

23 CHAIRMAN RAY: Commissioner?

24 EXAMINATION BY THE TRIBUNAL

25 BY COMMISSIONER AGUERO:

1 Q Mr. Brady, when you went to Raul's Cafe, did you
2 check if the jukebox is unlicensed?

3 A Yes, I did, sir. It was not licensed.

4 Q You are sure of that?

5 A Yes, sir.

6 Q And what about the other one, El Deportivo?

7 A That was also unlicensed.

8 Q Did you check that?

9 A Yes, I did, sir.

10 Q Then you went to three places?

11 A Yes, sir.

12 Q Mr. Sloate went to six place -- that's nine;
13 Mr. Robbin, 11; that's a total of 20, and the three you
14 went to is 23.

15 COMMISSIONER AGUERO: Thank you very much.

16 THE WITNESS: Thank you, sir.

17 CHAIRMAN RAY: I have a couple of questions.

18 BY CHAIRMAN RAY:

19 Q First of all, I like your style, make the boss
20 do most of the work.

21 (Laughter)

22 A Unfortunately, my real boss doesn't usually let
23 me get away with that.

24 Q All right. The question I want to ask you, on
25 El Deportivo, there was an unlicensed jukebox on the

1 premise. Did you note selection titles on the jukebox?

2 A Yes, I did.

3 Q What were they, were they primarily Hispanic, or

4 --

5 A I would say they were primarily Spanish, there
6 were only a handful of English-American titles that I can
7 think of.

8 Q Now, at Raul's, did you notice the selections?

9 A Yes, I believe there, again, it was primarily
10 Spanish selections. I am not sure of the mix there,
11 because I just went over to the box, looked for the
12 certificate, did a general perusal of the selections and
13 then went to ask for permission.

14 Q I notice that Mr. Sloate in his report of the
15 Saigon Nightclub, said jukebox with no Spanish songs.
16 When you made your report did you give the report to Mr.
17 Sloate that there were primarily Spanish titles on the
18 jukebox?

19 A I don't believe that I made note of that,
20 Commissioner.

21 Q Were you asked to do that?

22 A I had been asked to note specific titles and
23 performers, and since I was not able to get permission to
24 do that --

25 Q Oh, you asked permission to do that, and the

1 permission was denied by the manager?

2 A Yes -- well, not a manager, an employee I had
3 asked, and I was told that I could not, unless I had
4 permission from the manager, and the manager was not in,
5 and would not be for about another three or four hours.

6 Q So that is why we do not have a report as to the
7 selection pattern?

8 A On that particular instance, yes.

9 Q Those two particular instances?

10 A No, on Deportivo I did make a list, on El
11 Deportivo I did make a list of the --

12 Q It is not part of 18-X Revised, that's why I
13 wondered.

14 CHAIRMAN RAY: All right.

15 Mr. Eisen.

16 CROSS-EXAMINATION

17 BY MR. EISEN:

18 Q Just a couple of questions, Mr. Brady. My name
19 is Bruce Eisen.

20 A Hello.

21 Q You learned that Oquendo no longer existed, is
22 that correct?

23 A Yes, sir.

24 Q And you learned that it was out of business for
25 approximately one year?

1 A That's what the manager of the store that I spoke
2 with said.

3 Q Did you ask him whether or not he knew if there
4 was a jukebox on the premises, before it went out of
5 business?

6 A No, I did not, sir.

7 MR. EISEN: That's all I have for this witness.
8 Thank you.

9 CHAIRMAN RAY: Mr. Brady, thank you very much.
10 You may be excused.

11 THE WITNESS: Thank you.

12 CHAIRMAN RAY: Oh, I'm sorry, redirect.

13 MR. KOENIGSBERG: Mr. Chairman, I am right with
14 you. He may be excused.

15 (Whereupon, the witness was excused)

16 MR. EISEN: I whispered to someone over my
17 shoulder, with that limited cross-examination having been
18 concluded.

19 I would like to introduce from my office, Mr.
20 Allen Moskowitz, who has not appeared before the Tribunal
21 before.

22 CHAIRMAN RAY: Hello, Mr. Moskowitz.

23 Are there any other comments before we adjourn
24 the hearing?

25 MR. KOENIGSBERG: Mr. Chairman, it is traditional

1 at the conclusion of a proceeding for counsel to thank the
2 Tribunal for their patience with us. And although this
3 proceeding has been briefer than most, I know I speak for
4 Mr. Eisen and for Mr. Duncan, when I do give you our
5 thanks.

6 CHAIRMAN RAY: Mr. Eisen.

7 MR. EISEN: I don't know if counsel speaks for
8 me.

9 (Laughter)

10 MR. EISEN: I would like to make a statement for
11 the record. Frankly, I didn't know what to expect before
12 I came to the Tribunal with this case. I thank you both
13 for your indulgence with me, not knowing the procedures
14 of the Tribunal before.

15 I also thank you for being courteous to me and
16 to Mr. Bernard, when he was on the witness stand. Most
17 of all, I would like to thank you for the fairness that
18 I think you showed to me, and to my client, when he
19 testified. I know that it is not a secret that this is
20 a somewhat embattled agency. I can only say that from my
21 one contact with it, that I was both impressed and
22 gratified with both of your responses.

23 Thank you.

24 CHAIRMAN RAY: Thank you, sir.

25 COMMISSIONER AGUERO: Thank you very much.

1 CHAIRMAN RAY: Before we adjourn, I want to
2 remind all parties that the Proposed Findings of Fact and
3 Conclusions of Law are due to be filed with the CRT and
4 served on all parties by 5:00 p.m., October 17th, 1985.
5 Reply Findings of Facts and Conclusions of Law shall be
6 filed with the CRT and all parties on October 24th, 1985.

7 Commissioner Aguero, do you have any --

8 COMMISSIONER AGUERO: No, Mr. Chairman.

9 CHAIRMAN RAY: On that, we shall adjourn. Thank
10 you.

11 (Whereupon, the hearings in the above-entitled
12 matter was adjourned at 4:25 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript
In the matter of:

1982 Remand and 1983 Jukebox Distribution Proceedings

Before:

Copyright Royalty Tribunal

Date:

October 3, 1985

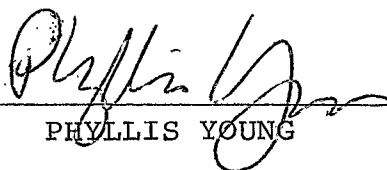
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Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.


PHYLLIS YOUNG

EXAMINATION OF 23 ESTABLISHMENTS LISTED
IN LAM ATTACHMENT 12 WHICH LAM CLAIMS
"HAVE A JUKE-BOX PERFORMING SPANISH LANG-
UAGE TITLES, INCLUDING [LAM WORKS]"

<u>Establishment</u>	<u>Results of Examination, 9/21-23/85</u>
Alvarez Luncheonette	No jukebox
Asia de Cuba	Now called La Taza #2 Restaurant; no jukebox
Cafe Andalucia	Jukebox on premises, license status unknown
El Antojito Restaurant	No jukebox
El Barin Restaurant	Now Marie's Beauty Salon; no jukebox
El Castillo Rojo	Out of business; now occupied by Rose Saigon Nightclub, has juke- box with no Spanish songs
El Con-Con	Now called El-Sa Restaurant; no jukebox
El Deportivo	Different address, slightly different name, unlicensed juke- box on premises
El Flamboyant	No jukebox
Raul's Cafe	Unlicensed jukebox on premises
Oquendo Restaurant	Now a hardware store; no jukebox
El Inca Restaurant	Unlicensed jukebox on premises
Leon de Oro	No jukebox
Big Daddy	Unable to locate such an estab- lishment
Las Penas	Unlicensed jukebox on premises
Latin Castle	No jukebox
Manuel Morales Restaurant	No jukebox
Montero's Bar	Jukebox on premises, license status unknown
Miramar Restaurant Restaurant	No jukebox
Restaurant Guayaquil	Now a refrigerator and air con- ditioning repair store

Establishment

Results of Examination, 9/21-22/85

Quinteros

Now a bank

Aretama

Out of business

Salinas Ecuador Restaurant

Now Iglesia de Dios Pentecostal
Church